

11 April 2005

## INFORMATION PAPER

**SUBJECT:** Use of Copyrighted Songs in Command Briefings

1. **Purpose.** Provide guidance on the process required to gain lawful permission to incorporate copyrighted music and songs into Command or Unit briefings/presentations.

2. **Facts.**

a. **Overview.** The increasingly popular practice of creating Command or Unit briefings/slideshows that are synched to copyrighted songs violates U.S. copyright law. Federal law provides for a copyright owner's recovery of damages for the unauthorized use by the Government of copyrighted materials. See 28 U.S.C. §1498(b).

b. **Public Performance is the Exclusive Right of the Copyright Owner(s).** One popular misconception is that personal/individual ownership of a music tape/CD permits use of that material in Command or Unit presentations. That notion runs contrary to U.S. copyright law. Simply put, public broadcast or "performance" of copyrighted material always requires the express permission of the copyright owner(s). See 17 U.S.C. §106. Copyright law interprets "public performances" very broadly.

c. **Process for Securing Lawful Permission to Use Copyrighted Songs.**

(1) Determine Copyright Holders. First, contact either ASCAP or BMI to determine which clearing organization has responsibility for the artist or song the Command is interested in using. ASCAP's phone number is 212-621-6000 (ASCAP stands for "American Society of Composers, Authors and Publishers") and website: [www.ascap.com](http://www.ascap.com); while BMI can be reached at 212-586-2000 or [www.bmi.com](http://www.bmi.com) (BMI stands for "Broadcast Music, Inc."). If the first organization does not have responsibility for your artist or song, proceed to call the other. Ultimately, these organizations will be able to direct you to points of contact for all applicable copyright holders.

(2) Formally request permission from all Copyright Holders. You will be responsible for gaining permission from all applicable copyright holders. It is not uncommon for

multiple business entities to share ownership of copyrights over particular works of art. A few suggested guidelines follow:

(a) Start at least 1 month in advance, if at all possible. Command exigencies may not be enough to influence commercial/corporate bureaucracies.

(b) Send a formal request in writing (fax or email direct to the POC will be quicker than an open letter to the corporate entity) with as much detail as possible: describe how the music will be used, in what context (i.e. forum, number of participants), number of times the music will be used over a given period, and any other pertinent facts. Sample form letters are enclosed.

(c) If seeking ongoing use, discuss the Army's oversight mechanism to ensure compliance with the terms of the license (e.g., CG's aide will record the date, time, and audience for each use and provide a quarterly report to the copyright holder(s).)

(d) Be prepared to pay for the copyright holder's permission. Generally speaking, the Command or Unit should expect to pay for permission to use the music. As a very rough guide, one recent negotiation involved a cost of about \$1,000 for a half dozen uses of the song. In another case, the license was available for a five year period for \$1 plus a \$250 administrative fee. Another reason to start the process as early as possible is to ensure the Command has time to fully contemplate the costs involved. Costs may also trigger other considerations, such as fiscal propriety in general (potential risk of substantiated IG complaints or Congressionals for waste, fraud and abuse, for example).

(e) One time or limited use with many restrictions (no recording or further broadcasting) may increase both the likelihood of approval at a manageable cost while decreasing the time needed to secure permission.

**d. Legal Authority and Required Coordinations.** The purchase of rights in copyrights is authorized by 10 U.S.C. §2386. Generally speaking, agreements to reproduce copyrighted materials costing \$2,500 or less may be approved at the installation level. AFARS Part 27 (and AR 27-60) sets forth further authorities and delegations to purchase the rights to use copyrighted materials.

e. **This is not an area in which to take legal risk!** It would not prove favorable to your Command for HQDA to receive a bill from a music publisher for your Command's unlicensed use of copyrighted materials, and the music companies have been known to send bills based on their estimates of past infringements. And, of course, they can always file suit for damages.

f. **Fair Use Provisions.** In relation to use of copyrighted music as part of Command or Unit briefings or presentations, the Fair Use provisions at 17 U.S.C. §107 have no applicability.

g. Point of contact for this information paper is MAJ Matt Miller, (757) 788-2302, or email: [matthew.m.miller@us.army.mil](mailto:matthew.m.miller@us.army.mil).

MAJ MILLER/ATJA/2302  
APPROVED BY \_\_\_\_\_